

Garrett-Cardenas-Paul's H.R. 5502
"Fifth Amendment Integrity Restoration Act"
Section-by Section Summary

Section 1. Short Title –The Fifth Amendment Integrity Restoration Act

Section 2. Civil Forfeiture Proceedings

Federal forfeiture law stacks the deck against innocent property owners by both (1) imposing a low burden on the government to subject property to forfeiture; and (2) improperly placing the burden of proof to demonstrate innocence on the property owner. These twin problems are addressed by the FAIR Act by amending **18 U.S.C. § 983** to reflect the following underlined changes and excising the stricken sections:

(c) Burden of Proof.— In a suit or action brought under any civil forfeiture statute for the civil forfeiture of any property—

(1) the burden of proof is on the Government to establish, by clear and convincing evidence, that the property is subject to forfeiture;

(2) the Government may use evidence gathered after the filing of a complaint for forfeiture to establish, by clear and convincing evidence, that property is subject to forfeiture

(3) if the Government's theory of forfeiture is that the property used to commit or facilitate the commission of a criminal offense, or was involved in the commission of a criminal offense, the Government shall establish, by clear and convincing evidence, that--

(A) there was a substantial connection between the property and the offense;
and

(B) the owner of any interest in the seized property--

(i) intentionally used the property in connection with the offense; or

(ii) knowingly consented or was willfully blind to the use of the property by another in connection with the offense.

(d) Innocent Owner Defense.—

(1) An innocent owner's interest in property shall not be forfeited under any civil forfeiture statute. The claimant shall have the burden of proving that the claimant is an innocent owner by a preponderance of the evidence.

(2)(A) With respect to a property interest in existence at the time the illegal conduct giving rise to forfeiture took place, the term "innocent owner" means an owner who—

~~(i) did not know of the conduct giving rise to forfeiture; or~~
(i) upon learning of the conduct giving rise to the forfeiture, did all that reasonably could be expected under the circumstances to terminate such use of the property.

Section 3. Disposition of Forfeited Property

Amending two provisions of the U.S. Code would substantially undercut the perverse profit incentive created for federal law-enforcement agencies to seize property. It requires all property seized during federal civil asset forfeiture proceedings to be placed in the Treasury's General Fund rather than the DOJ Asset Forfeiture Fund. This will eliminate the equitable sharing program, which allows state officials to apply federal law instead of stricter state laws on civil asset forfeiture – specifically so they can receive money through the DOJ's Asset Forfeiture fund. The FAIR Act will remove that incentive by making the following changes to **21 USC. 881(e)(2)(B)**:

(B) The Attorney General shall forward to the Treasurer of the United States for deposit in accordance with section ~~524 (c)~~ of title ~~28~~, the Treasury's General Fund any amounts of such moneys and proceeds remaining after payment of the expenses provided in subparagraph (A), except that, with respect to forfeitures conducted by the Postal Service, the Postal Service shall deposit in the Postal Service Fund, under section 2003 (B)(7) of title 39, such moneys and proceeds

18 U.S.C. § 981(e) shall be amended as follows;

(e) Notwithstanding any other provision of the law, except section 3 of the Anti Drug Abuse Act of 1986, the Attorney General, the Secretary of the Treasury, or the Postal Service, as the case may be, may forward to the Treasurer of the United States any proceeds of property forfeited pursuant to this section for deposit in the Treasury's General Fund, or transfer such property on such terms and conditions as he may determine—

Section 4. Department of Justice Assets Forfeiture Fund Deposits

The federal asset forfeiture fund is

28 U.S.C. § 524(c)(4) shall be amended to read:

(4) There shall be deposited in the Fund—

~~(A) all amounts from the forfeiture of property under any law enforced or administered by the Department of Justice, except all proceeds of forfeitures available for use by the Secretary of the Treasury or the Secretary of the Interior pursuant to section 11(d) of the Endangered Species Act (16 U.S.C. 1540 (d)) or section 6(d) of the Lacey Act Amendments of 1981 (16 U.S.C. 3375 (d)), or the Postmaster General of the United States pursuant to 39 U.S.C. 2003 (b)(7);~~

~~(B) all amounts representing the Federal equitable share from the forfeiture of property under any Federal, State, local or foreign law, for any Federal agency participating in the Fund;~~

(A) all amounts transferred by the Secretary of the Treasury pursuant to section [9703\(g\)\(4\)\(A\)\(ii\)](#) ^[1] of title [31](#); and

(B) all amounts collected—

(i) by the United States pursuant to a reimbursement order under paragraph (2) of section 413(q) of the Controlled Substances Act ([21 U.S.C. 853 \(q\)](#)); and

Section 5. Applicability

This act will only be applicable to civil forfeiture proceedings filed on or after the date of enactment of this Act.